

August 1, 2001

(AR-18J)

Robert F. Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
122 South Front Street
P. O. Box 1049
Columbus, Ohio 43266-1049

Dear Mr. Hodanbosi:

This letter is to confirm the United States Environmental Protection Agency's (USEPA) position on how the Ohio Environmental Protection Agency (OEPA) permits insignificant emission units (IEU). Specifically, Ohio's current rules exclude IEUs with applicable requirements from the Federal and State enforceable sections of Title V permits. Our respective offices discussed this issue at our June 13-14, 2001, meeting in Columbus as well as in a July 9, 2001, conference call with your staff. Following the July 9 call your staff suggested that this letter would be in order.

The Court of Appeals for the Ninth Circuit highlighted this deficiency in *Western States Petroleum Association (WSPA) v. Environmental Protection Agency*, 87 F.3d 280 (9th Cir. 1996). USEPA acknowledges our inconsistency in approving Title V programs that did not require IEUs to be included in the Title V permit. USEPA committed to address those inconsistent programs in the Federal Register notice that granted final interim approval to the Title V programs of the State of Tennessee and Memphis-Shelby County (61 Fed. Reg. 39335, July 29, 1996).

Our concern with Ohio's rules focuses on the language in the Ohio Administrative Code (OAC) 3745-77-02(E)(1).

(E) Emissions Units and Title V Sources.

(1) For major sources, the federally enforceable portion of the permit shall include all applicable requirements for all relevant emissions units at the major source. For purposes of this paragraph, the term "relevant emissions units" shall mean only those emissions units that are subject to applicable

requirements and that are not insignificant activities and emissions levels.

Through this language Ohio impermissibly exempts from the federally enforceable section of its Title V permits federally enforceable applicable requirements to which IEUs are subject. Although the Part 70 regulations provide states some opportunity to exempt or limit the amount of information on IEUs required in a Title V application, the July 21, 1992, preamble to the Title V regulations makes it clear that this exemption does not apply to the permit content.

...[T]he Administrator has provided that exemptions for insignificant activities or emission levels can be developed by States individually as part of their part 70 programs, rather than being established on a national basis by EPA. The regulation limits the State's discretion by precluding such exemptions if they would interfere with the determination or imposition of any applicable requirement, or the calculation of fees. (57 Fed. Reg. 32273.)

We are requesting that OEPA amend it's rules to eliminate the exemption for IEU's from the federally enforceable section of the permit. We suggest the following language change to OAC 3745-77-02(E)(1).

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While we are sensitive to the number of ongoing efforts requiring OEPA's attention at this time, we must re-iterate the importance of resolving this issue in a timely manner. Failure to resolve this issue will result in a notice of deficiency. If you have any questions or wish to discuss this issue further, please call Genevieve Damico, of my staff, at (312) 353-4761.

Sincerely yours,

/s/

Steve Rothblatt, Chief
Air Programs Branch

